

AMENDED IN SENATE JULY 5, 2007

AMENDED IN ASSEMBLY JUNE 4, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 1539**

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**Introduced by Assembly Members Krekorian and Lieber**

**(Coauthors: Assembly Members Beall, Leno, and Ma)**

(Coauthors: Senators Cedillo, Kuehl, *Romero*, Scott, and Steinberg)

February 23, 2007

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An act to amend Section 1170 of the Penal Code, relating to sentencing.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1539, as amended, Krekorian. Sentencing.

Under existing law, a state prisoner who is diagnosed with a disease that would produce death within 6 months and whose release is deemed not to threaten the public safety may have his or her sentence recalled and be resentenced. Existing law additionally sets forth grounds under which the court has discretion to find that a prisoner is eligible for resentence or recall.

This bill would extend those provisions for early release to prisoners who are permanently medically incapacitated and whose release is deemed not to threaten public safety. This bill would also oblige a physician employed by the Department of Corrections and Rehabilitation who determines that a prisoner has 6 months or less to live to inform the appropriate chief medical officer of that fact, and, if he or she concurs, would oblige the chief medical officer to inform the warden of that fact. This bill would also require the warden or the warden's representative to inform a prisoner given that prognosis of the recall

and resentencing procedures, and to arrange for the prisoner's designee to be informed of the prisoner's medical condition and prognosis, and of the procedures for recall and resentencing. This bill would require the warden or the warden's representative to contact a mentally unfit inmate's emergency contact and provide the contact with this information. This bill would also direct the warden or the warden's representative to keep the prisoner and the prisoner's designee apprised of the prisoner's medical condition and recall and resentencing proceedings. This bill would also provide that when a prisoner or his or her designee initiates recall and resentencing procedures, the chief medical officer and the warden or the warden's representative, if they find that the prisoner has 6 months or less to live, shall, within 48 hours of their finding, inform the prisoner or his or her designee of the recall and resentencing procedures. This bill would also require release of a prisoner who is resentenced within 48 hours of receipt of the court's order, unless the prisoner agrees to a longer time period, and would require that the prisoner be given his or her medical records, state identification, medications, and property at the time of release. Finally, this bill would require the secretary to issue a directive to Department of Corrections and Rehabilitation staff explaining recall and resentencing procedures.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1170 of the Penal Code, as amended by  
2     Section 2 of Chapter 3 of the Statutes of 2007, is amended to read:  
3     1170. (a) (1) The Legislature finds and declares that the  
4     purpose of imprisonment for crime is punishment. This purpose  
5     is best served by terms proportionate to the seriousness of the  
6     offense with provision for uniformity in the sentences of offenders  
7     committing the same offense under similar circumstances. The  
8     Legislature further finds and declares that the elimination of  
9     disparity and the provision of uniformity of sentences can best be  
10    achieved by determinate sentences fixed by statute in proportion  
11    to the seriousness of the offense as determined by the Legislature  
12    to be imposed by the court with specified discretion.  
13    (2) Notwithstanding paragraph (1), the Legislature further finds  
14    and declares that programs should be available for inmates,

1 including, but not limited to, educational programs, that are  
2 designed to prepare nonviolent felony offenders for successful  
3 reentry into the community. The Legislature encourages the  
4 development of policies and programs designed to educate and  
5 rehabilitate nonviolent felony offenders. In implementing this  
6 section, the Department of Corrections and Rehabilitation is  
7 encouraged to give priority enrollment in programs to promote  
8 successful return to the community to an inmate with a short  
9 remaining term of commitment and a release date that would allow  
10 him or her adequate time to complete the program.

11 (3) In any case in which the punishment prescribed by statute  
12 for a person convicted of a public offense is a term of imprisonment  
13 in the state prison of any specification of three time periods, the  
14 court shall sentence the defendant to one of the terms of  
15 imprisonment specified unless the convicted person is given any  
16 other disposition provided by law, including a fine, jail, probation,  
17 or the suspension of imposition or execution of sentence or is  
18 sentenced pursuant to subdivision (b) of Section 1168 because he  
19 or she had committed his or her crime prior to July 1, 1977. In  
20 sentencing the convicted person, the court shall apply the  
21 sentencing rules of the Judicial Council. The court, unless it  
22 determines that there are circumstances in mitigation of the  
23 punishment prescribed, shall also impose any other term that it is  
24 required by law to impose as an additional term. Nothing in this  
25 article shall affect any provision of law that imposes the death  
26 penalty, that authorizes or restricts the granting of probation or  
27 suspending the execution or imposition of sentence, or expressly  
28 provides for imprisonment in the state prison for life. In any case  
29 in which the amount of preimprisonment credit under Section  
30 2900.5 or any other provision of law is equal to or exceeds any  
31 sentence imposed pursuant to this chapter, the entire sentence shall  
32 be deemed to have been served and the defendant shall not be  
33 actually delivered to the custody of the ~~Secretary of the Department~~  
34 ~~of Corrections and Rehabilitation~~ *secretary*. The court shall advise  
35 the defendant that he or she shall serve a period of parole and order  
36 the defendant to report to the parole office closest to the defendant's  
37 last legal residence, unless the in-custody credits equal the total  
38 sentence, including both confinement time and the period of parole.  
39 The sentence shall be deemed a separate prior prison term under  
40 Section 667.5, and a copy of the judgment and other necessary

1 documentation shall be forwarded to the ~~Secretary of the~~  
2 ~~Department of Corrections and Rehabilitation~~ *secretary*.

3 (b) When a judgment of imprisonment is to be imposed and the  
4 statute specifies three possible terms, the choice of the appropriate  
5 term shall rest within the sound discretion of the court. At least  
6 four days prior to the time set for imposition of judgment, either  
7 party or the victim, or the family of the victim if the victim is  
8 deceased, may submit a statement in aggravation or mitigation. In  
9 determining the appropriate term, the court may consider the record  
10 in the case, the probation officer's report, other reports including  
11 reports received pursuant to Section 1203.03 and statements in  
12 aggravation or mitigation submitted by the prosecution, the  
13 defendant, or the victim, or the family of the victim if the victim  
14 is deceased, and any further evidence introduced at the sentencing  
15 hearing. The court shall select the term which, in the court's  
16 discretion, best serves the interests of justice. The court shall set  
17 forth on the record the reasons for imposing the term selected and  
18 the court may not impose an upper term by using the fact of any  
19 enhancement upon which sentence is imposed under any provision  
20 of law. A term of imprisonment shall not be specified if imposition  
21 of sentence is suspended.

22 (c) The court shall state the reasons for its sentence choice on  
23 the record at the time of sentencing. The court shall also inform  
24 the defendant that as part of the sentence after expiration of the  
25 term he or she may be on parole for a period as provided in Section  
26 3000.

27 (d) When a defendant subject to this section or subdivision (b)  
28 of Section 1168 has been sentenced to be imprisoned in the state  
29 prison and has been committed to the custody of the ~~Secretary of~~  
30 ~~the Department of Corrections and Rehabilitation~~ *secretary*, the  
31 court may, within 120 days of the date of commitment on its own  
32 motion, or at any time upon the recommendation of the secretary  
33 or the Board of Parole Hearings, recall the sentence and  
34 commitment previously ordered and resentence the defendant in  
35 the same manner as if he or she had not previously been sentenced,  
36 provided the new sentence, if any, is no greater than the initial  
37 sentence. The resentence under this subdivision shall apply the  
38 sentencing rules of the Judicial Council so as to eliminate disparity  
39 of sentences and to promote uniformity of sentencing. Credit shall  
40 be given for time served.

1 (e) (1) Notwithstanding any other law and consistent with  
2 paragraph (1) of subdivision (a), ~~if the Secretary of the Department~~  
3 ~~of Corrections and Rehabilitation, if the secretary~~ or the Board of  
4 Parole Hearings or both determine that a prisoner satisfies the  
5 criteria set forth in paragraph (2), the secretary or the board may  
6 recommend to the court that the prisoner's sentence be recalled.

7 (2) The court shall have the discretion to resentence or recall if  
8 the court finds ~~both of the following~~ *that the facts described in*  
9 *subparagraph (A) and (B) or subparagraphs (B) and (C) exist:*

10 (A) The prisoner is terminally ill with an incurable condition  
11 caused by an illness or disease that would produce death within  
12 six months, as determined by a physician employed by the  
13 department.

14 (B) The conditions under which the prisoner would be released  
15 or receive treatment do not pose a threat to public safety.

16 (C) *The prisoner is permanently medically incapacitated with*  
17 *a medical condition that renders him or her permanently unable*  
18 *to perform activities of basic daily living, and results in the*  
19 *prisoner requiring 24-hour total care, including, but not limited*  
20 *to, coma, persistent vegetative state, brain death,*  
21 *ventilator-dependency, loss of control of muscular or neurological*  
22 *function, and that incapacitation did not exist at the time of the*  
23 *original sentencing.*

24 The Board of Parole Hearings shall make findings pursuant to  
25 this subdivision before making a recommendation for resentence  
26 or recall to the court. This subdivision does not apply to a prisoner  
27 sentenced to death or a term of life without the possibility of parole.

28 (3) Within 10 days of receipt of a positive recommendation by  
29 the secretary or the board, the court shall hold a hearing to consider  
30 whether the prisoner's sentence should be recalled.

31 (4) ~~The~~ *Any physician employed by the department who*  
32 *determines that a prisoner has six months or less to live shall notify*  
33 *the chief medical officer of the prognosis. If the chief medical*  
34 *officer concurs with the prognosis, he or she shall notify the*  
35 *warden. Within 48 hours of receiving notification, the warden or*  
36 *the warden's representative shall notify the prisoner of the recall*  
37 *and resentencing procedures, and shall arrange for the prisoner*  
38 *to designate a family member or other outside agent to be notified*  
39 *as to the prisoner's medical condition and prognosis, and as to*  
40 *the recall and resentencing procedures. If the inmate is deemed*

1 *mentally unfit, the warden or the warden's representative shall*  
2 *contact the inmate's emergency contact and provide the*  
3 *information described in paragraph (2).*

4 *(5) The warden or the warden's representative shall provide*  
5 *the prisoner and his or her family member, agent, or emergency*  
6 *contact, as described in paragraph (4), updated information*  
7 *throughout the recall and resentencing process with regard to the*  
8 *prisoner's medical condition and the status of the prisoner's recall*  
9 *and resentencing proceedings.*

10 *(6) Notwithstanding any other provisions of this section, the*  
11 *prisoner or his or her family member or designee may*  
12 *independently request consideration for recall and resentencing*  
13 *by contacting the chief medical officer at the prison or the Secretary*  
14 *of the Department of Corrections and Rehabilitation secretary.*  
15 *Upon receipt of the request, if the chief medical officer and the*  
16 *warden or the warden's representative shall follow the procedures*  
17 *described in paragraph (4). If the secretary determines that the*  
18 *prisoner satisfies the criteria set forth in paragraph (2), the secretary*  
19 *or board may recommend to the court that the prisoner's sentence*  
20 *be recalled. The secretary shall submit a recommendation for*  
21 *release within 30 days in the case of inmates sentenced to*  
22 *determinate terms and, in the case of inmates sentenced to*  
23 *indeterminate terms, the secretary—may shall make a*  
24 *recommendation to the Board of Parole Hearings with respect to*  
25 *the inmates who have applied under this section. The board shall*  
26 *consider this information and make an independent judgment*  
27 *pursuant to paragraph (2) and make findings related thereto before*  
28 *rejecting the request or making a recommendation to the court.*  
29 *This action shall be taken at the next lawfully noticed board*  
30 *meeting.*

31 ~~(5)~~

32 *(7) Any recommendation for recall submitted to the court by*  
33 *the Secretary of the Department of Corrections and Rehabilitation*  
34 *secretary or the Board of Parole Hearings shall include one or*  
35 *more medical evaluations, a postrelease plan, and findings pursuant*  
36 *to paragraph (2).*

37 ~~(6)~~

38 *(8) If possible, the matter shall be heard before the same judge*  
39 *of the court who sentenced the prisoner.*

1     (9) *If the court grants the recall and resentencing application,*  
2 *the prisoner shall be released by the department within 48 hours*  
3 *of receipt of the court's order, unless a longer time period is agreed*  
4 *to by the inmate. At the time of release, the warden or the warden's*  
5 *representative shall ensure that the prisoner has each of the*  
6 *following in his or her possession: a discharge medical summary,*  
7 *full medical records, state identification, parole medications, and*  
8 *all property belonging to the prisoner. After discharge, any*  
9 *additional records shall be sent to the prisoner's forwarding*  
10 *address.*

11     (10) *The secretary shall issue a directive to medical and*  
12 *correctional staff employed by the department that details the*  
13 *guidelines and procedures for initiating a recall and resentencing*  
14 *procedure. The directive shall clearly state that any prisoner who*  
15 *is given a prognosis of six months or less to live is eligible for*  
16 *recall and resentencing consideration, and that recall and*  
17 *resentencing procedures shall be initiated upon that prognosis.*

18     (f) Any sentence imposed under this article shall be subject to  
19 the provisions of Sections 3000 and 3057 and any other applicable  
20 provisions of law.

21     (g) A sentence to state prison for a determinate term for which  
22 only one term is specified, is a sentence to state prison under this  
23 section.

24     (h) This section shall remain in effect only until January 1, 2009,  
25 and as of that date is repealed, unless a later enacted statute, that  
26 is enacted before that date, deletes or extends that date.

27     SEC. 2. *Section 1170 of the Penal Code, as added by Section*  
28 *3 of Chapter 3 of the Statutes of 2007, is amended to read:*

29     1170. (a) (1) The Legislature finds and declares that the  
30 purpose of imprisonment for crime is punishment. This purpose  
31 is best served by terms proportionate to the seriousness of the  
32 offense with provision for uniformity in the sentences of offenders  
33 committing the same offense under similar circumstances. The  
34 Legislature further finds and declares that the elimination of  
35 disparity and the provision of uniformity of sentences can best be  
36 achieved by determinate sentences fixed by statute in proportion  
37 to the seriousness of the offense as determined by the Legislature  
38 to be imposed by the court with specified discretion.

39     (2) Notwithstanding paragraph (1), the Legislature further finds  
40 and declares that programs should be available for inmates,

1 including, but not limited to, educational programs, that are  
2 designed to prepare nonviolent felony offenders for successful  
3 reentry into the community. The Legislature encourages the  
4 development of policies and programs designed to educate and  
5 rehabilitate nonviolent felony offenders. In implementing this  
6 section, the Department of Corrections and Rehabilitation is  
7 encouraged to give priority enrollment in programs to promote  
8 successful return to the community to an inmate with a short  
9 remaining term of commitment and a release date that would allow  
10 him or her adequate time to complete the program.

11 (3) In any case in which the punishment prescribed by statute  
12 for a person convicted of a public offense is a term of imprisonment  
13 in the state prison of any specification of three time periods, the  
14 court shall sentence the defendant to one of the terms of  
15 imprisonment specified unless the convicted person is given any  
16 other disposition provided by law, including a fine, jail, probation,  
17 or the suspension of imposition or execution of sentence or is  
18 sentenced pursuant to subdivision (b) of Section 1168 because he  
19 or she had committed his or her crime prior to July 1, 1977. In  
20 sentencing the convicted person, the court shall apply the  
21 sentencing rules of the Judicial Council. The court, unless it  
22 determines that there are circumstances in mitigation of the  
23 punishment prescribed, shall also impose any other term that it is  
24 required by law to impose as an additional term. Nothing in this  
25 article shall affect any provision of law that imposes the death  
26 penalty, that authorizes or restricts the granting of probation or  
27 suspending the execution or imposition of sentence, or expressly  
28 provides for imprisonment in the state prison for life. In any case  
29 in which the amount of preimprisonment credit under Section  
30 2900.5 or any other provision of law is equal to or exceeds any  
31 sentence imposed pursuant to this chapter, the entire sentence shall  
32 be deemed to have been served and the defendant shall not be  
33 actually delivered to the custody of the ~~Secretary of the Department~~  
34 ~~of Corrections and Rehabilitation~~ *secretary*. The court shall advise  
35 the defendant that he or she shall serve a period of parole and order  
36 the defendant to report to the parole office closest to the defendant's  
37 last legal residence, unless the in-custody credits equal the total  
38 sentence, including both confinement time and the period of parole.  
39 The sentence shall be deemed a separate prior prison term under



1 Section 667.5, and a copy of the judgment and other necessary  
2 documentation shall be forwarded to the secretary.

3 (b) When a judgment of imprisonment is to be imposed and the  
4 statute specifies three possible terms, the court shall order  
5 imposition of the middle term, unless there are circumstances in  
6 aggravation or mitigation of the crime. At least four days prior to  
7 the time set for imposition of judgment, either party or the victim,  
8 or the family of the victim if the victim is deceased, may submit  
9 a statement in aggravation or mitigation to dispute facts in the  
10 record or the probation officer's report, or to present additional  
11 facts. In determining whether there are circumstances that justify  
12 imposition of the upper or lower term, the court may consider the  
13 record in the case, the probation officer's report, other reports  
14 including reports received pursuant to Section 1203.03 and  
15 statements in aggravation or mitigation submitted by the  
16 prosecution, the defendant, or the victim, or the family of the victim  
17 if the victim is deceased, and any further evidence introduced at  
18 the sentencing hearing. The court shall set forth on the record the  
19 facts and reasons for imposing the upper or lower term. The court  
20 may not impose an upper term by using the fact of any  
21 enhancement upon which sentence is imposed under any provision  
22 of law. A term of imprisonment shall not be specified if imposition  
23 of sentence is suspended.

24 (c) The court shall state the reasons for its sentence choice on  
25 the record at the time of sentencing. The court shall also inform  
26 the defendant that as part of the sentence after expiration of the  
27 term he or she may be on parole for a period as provided in Section  
28 3000.

29 (d) When a defendant subject to this section or subdivision (b)  
30 of Section 1168 has been sentenced to be imprisoned in the state  
31 prison and has been committed to the custody of the ~~Secretary of~~  
32 ~~Corrections and Rehabilitation~~ *secretary*, the court may, within  
33 120 days of the date of commitment on its own motion, or at any  
34 time upon the recommendation of the secretary or the Board of  
35 Parole Hearings, recall the sentence and commitment previously  
36 ordered and resentence the defendant in the same manner as if he  
37 or she had not previously been sentenced, provided the new  
38 sentence, if any, is no greater than the initial sentence. The  
39 resentence under this subdivision shall apply the sentencing rules  
40 of the Judicial Council so as to eliminate disparity of sentences

1 and to promote uniformity of sentencing. Credit shall be given for  
2 time served.

3 (e) (1) Notwithstanding any other law and consistent with  
4 paragraph (1) of subdivision (a), ~~if the Secretary of the Department~~  
5 ~~of Corrections and Rehabilitation~~ *if the secretary* or the Board of  
6 Parole Hearings or both determine that a prisoner satisfies the  
7 criteria set forth in paragraph (2), the secretary or the board may  
8 recommend to the court that the prisoner's sentence be recalled.

9 (2) The court shall have the discretion to resentence or recall if  
10 the court finds ~~both of the following~~ *that the facts described in*  
11 *subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:*

12 (A) The prisoner is terminally ill with an incurable condition  
13 caused by an illness or disease that would produce death within  
14 six months, as determined by a physician employed by the  
15 department.

16 (B) The conditions under which the prisoner would be released  
17 or receive treatment do not pose a threat to public safety.

18 (C) *The prisoner is permanently medically incapacitated with*  
19 *a medical condition that renders him or her permanently unable*  
20 *to perform activities of basic daily living, and results in the*  
21 *prisoner requiring 24-hour total care, including, but not limited*  
22 *to, coma, persistent vegetative state, brain death,*  
23 *ventilator-dependency, loss of control of muscular or neurological*  
24 *function, and that incapacitation did not exist at the time of the*  
25 *original sentencing.*

26 ~~The board~~ Board of Parole Hearings shall make findings  
27 pursuant to this subdivision before making a recommendation for  
28 resentence or recall to the court. This subdivision does not apply  
29 to a prisoner sentenced to death or a term of life without the  
30 possibility of parole.

31 (3) Within 10 days of receipt of a positive recommendation by  
32 the secretary or the board, the court shall hold a hearing to consider  
33 whether the prisoner's sentence should be recalled.

34 (4) ~~The~~ *Any physician employed by the department who*  
35 *determines that a prisoner has six months or less to live shall notify*  
36 *the chief medical officer of the prognosis. If the chief medical*  
37 *officer concurs with the prognosis, he or she shall notify the*  
38 *warden. Within 48 hours of receiving notification, the warden or*  
39 *the warden's representative shall notify the prisoner of the recall*  
40 *and resentencing procedures, and shall arrange for the prisoner*

1 to designate a family member or other outside agent to be notified  
2 as to the prisoner's medical condition and prognosis, and as to  
3 the recall and resentencing procedures. If the inmate is deemed  
4 mentally unfit, the warden or the warden's representative shall  
5 contact the inmate's emergency contact and provide the  
6 information described in paragraph (2).

7 (5) The warden or the warden's representative shall provide  
8 the prisoner and his or her family member, agent, or emergency  
9 contact, as described in paragraph (4), updated information  
10 throughout the recall and resentencing process with regard to the  
11 prisoner's medical condition and the status of the prisoner's recall  
12 and resentencing proceedings.

13 (6) Notwithstanding any other provisions of this section, the  
14 prisoner or his or her family member or designee may  
15 independently request consideration for recall and resentencing  
16 by contacting the chief medical officer at the prison or the  
17 secretary. Upon receipt of the request, ~~if the chief medical officer~~  
18 ~~and the warden or the warden's representative shall follow the~~  
19 ~~procedures described in paragraph (4).~~ If the secretary determines  
20 that the prisoner satisfies the criteria set forth in paragraph (2), the  
21 secretary or board may recommend to the court that the prisoner's  
22 sentence be recalled. The secretary shall submit a recommendation  
23 for release within 30 days in the case of inmates sentenced to  
24 determinate terms and, in the case of inmates sentenced to  
25 indeterminate terms, the secretary ~~may~~ shall make a  
26 recommendation to the ~~board~~ Board of Parole Hearings with  
27 respect to the inmates who have applied under this section. The  
28 board shall consider this information and make an independent  
29 judgment pursuant to paragraph (2) and make findings related  
30 thereto before rejecting the request or making a recommendation  
31 to the court. This action shall be taken at the next lawfully noticed  
32 board meeting.

33 ~~(5)~~

34 (7) Any recommendation for recall submitted to the court by  
35 the secretary or the ~~board~~ Board of Parole Hearings shall include  
36 one or more medical evaluations, a postrelease plan, and findings  
37 pursuant to paragraph (2).

38 ~~(6)~~

39 (8) If possible, the matter shall be heard before the same judge  
40 of the court who sentenced the prisoner.

1     (9) *If the court grants the recall and resentencing application,*  
2 *the prisoner shall be released by the department within 48 hours*  
3 *of receipt of the court's order, unless a longer time period is agreed*  
4 *to by the inmate. At the time of release, the warden or the warden's*  
5 *representative shall ensure that the prisoner has each of the*  
6 *following in his or her possession: a discharge medical summary,*  
7 *full medical records, state identification, parole medications, and*  
8 *all property belonging to the prisoner. After discharge, any*  
9 *additional records shall be sent to the prisoner's forwarding*  
10 *address.*

11     (10) *The secretary shall issue a directive to medical and*  
12 *correctional staff employed by the department that details the*  
13 *guidelines and procedures for initiating a recall and resentencing*  
14 *procedure. The directive shall clearly state that any prisoner who*  
15 *is given a prognosis of six months or less to live is eligible for*  
16 *recall and resentencing consideration, and that recall and*  
17 *resentencing procedures shall be initiated upon that prognosis.*

18     (f) Any sentence imposed under this article shall be subject to  
19 the provisions of Sections 3000 and 3057 and any other applicable  
20 provisions of law.

21     (g) A sentence to state prison for a determinate term for which  
22 only one term is specified, is a sentence to state prison under this  
23 section.

24     (h) This section shall become operative on January 1, 2009.  
25

26  
27     **All matter omitted in this version of the bill**  
28     **appears in the bill as amended in the**  
29     **Assembly, June 4, 2007 (JR11)**  
30